

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7701

Investigation into the Complaint of Mark                    )  
Tucker concerning Cellco Partnership, d/b/a                )  
Verizon Wireless's, INpulse Prepaid Wireless               )  
Telephone Service Plan    )

Order entered: 2/24/2011

**PREHEARING CONFERENCE MEMORANDUM**

On February 15, 2011, I convened a prehearing conference in this docket. Notices of appearance were entered by the following individuals: Mark Tucker, pro se; Louise Porter, Esq., on behalf of the Vermont Department of Public Service (the "Department"); and Paul Phillips, Esq., Primmer Piper Eggleston & Cramer, PC, on behalf of Cellco Partnership, d/b/a Verizon Wireless ("Verizon Wireless" or the "Company"). At the prehearing conference, a discussion was held on the record to identify and simplify the issues in the docket at this stage and to set a procedural schedule.

1. Issues identified and simplified

I advised the parties that the issue to be resolved in this investigation is whether Mr. Tucker's complaint concerning Verizon's alleged unfair practice is more appropriately characterized as a dispute regarding the "terms and conditions" or the "rates" offered by Verizon Wireless under the INpulse Plan – a prepaid wireless service offering.<sup>1</sup> The need for this determination arises as a function of reconciling the scope of the Public Service Board's ("Board") residual state-law-based subject matter jurisdiction over "terms and conditions" of wireless service providers pursuant to 47 U.S.C. § 332(c)(A)(3), with due regard for the fact that

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1. Tr. 2/15/11 at 74 (Tierney).

the "rates" for such service is a matter that is reserved for federal regulation.<sup>2</sup> In conjunction with identifying this issue, I reiterated that, at this time, I have a narrow charge from the Board to convene a technical hearing for the purpose of establishing whether sufficient predicate jurisdictional facts exist to support an assertion of the Board's regulatory jurisdiction over Mr. Tucker's complaint.<sup>3</sup>

Verizon Wireless identified two issues at the prehearing conference. First, the Company contends that the Board lacks any state-law-based jurisdiction to act on Mr. Tucker's concerns. To this end, the Company requested an opportunity to file a motion to dismiss Mr. Tucker's complaint pursuant to V.R.C.P. 12(b)(1) (lack of jurisdiction) and 12(b)(6) (failure to state a claim). A consensus was reached to craft a procedural schedule that will afford Verizon Wireless the opportunity to file a dismissal motion pursuant to V.R.C.P. 12.<sup>4</sup>

The second issue raised by Verizon Wireless was its uncertainty with regard to the precise nature of Mr. Tucker's complaint.<sup>5</sup> I offered the Company an opportunity to file a motion pursuant to V.R.C.P. 12(e) seeking a more definite statement from Mr. Tucker. After lengthy discussion on the record, Mr. Tucker agreed that his complaint could be summarized as a challenge to the alleged unfairness or unreasonableness of the terms of the INpulse Plan contract that allow Verizon Wireless to "zero out" any monetary balance remaining in a customer's account at the end of the term of service unless that customer deposits additional funds.<sup>6</sup> Mr. Tucker views these terms to be "confiscatory" and inconsistent with the Company's advertised claim that he would only have to pay for service on the days when he actually used the service.<sup>7</sup> After the discussion on the record concerning the nature of Mr. Tucker's complaint, Verizon Wireless declined to file a Rule 12(e) motion for clarification.<sup>8</sup>

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2. See Docket 7701, Order of 1/13/11 at 2.

3. Tr. 2/15/11 at 43 (Tierney).

4. Tr. 2/15/11 at 58 (Tierney).

5. Tr. 2/15/11 at 10 (Phillips).

6. Tr. 2/15/11 at 23-24 (Tucker).

7. Tr. 2/15/11 at 13-14 and 17-18 (Tucker).

8. Tr. 2/15/11 at 34 (Phillips).

2. Procedural schedule

I hereby adopt the following procedural schedule for this phase of this investigation:

March 4, 2011	Verizon Wireless to file a Motion to Dismiss; Mr. Tucker and Verizon Wireless simultaneously file copies of the documents requested by the Hearing Officer.
March 28, 2011	Mr. Tucker and the Department to file responses to the Motion to Dismiss.
April 18, 2011	Verizon Wireless to file a sur-reply to the responses from Mr. Tucker and the Department.

At this time, this schedule does not provide for discovery, nor does it reflect a set date for the evidentiary hearing contemplated in the Board's Order opening this investigation. On the issue of discovery, Mr. Tucker is aware of his right to commence discovery upon Verizon Wireless at this time, but he has elected to defer doing so until such time as the Motion to Dismiss has been decided. At that time, as needed, a date will be set for the evidentiary hearing regarding predicate jurisdictional facts.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 24<sup>th</sup> day of February, 2011.

s/ June E. Tierney  
June E. Tierney, Esq.  
Hearing Officer

OFFICE OF THE CLERK

FILED: February 24, 2011

ATTEST: s/ Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*